

**RAIL SERVICE COMPETITION COUNCIL
MINUTES OF THE MEETING**

**Wednesday
September 27, 2006
11:00am – 4:00pm**

**Small Business Development Center
305 W. Mercury St.; 2nd Floor
Butte, Montana**

RSCC MEMBERS PRESENT: Doug Miller, Evan Barrett, Russell Hobbs, Carla Allen, Larry Bonderud, Mike O'Hara, Joel Clairmont for Nancy K. Peterson, Dick Turner for Jim Lynch, Rep. Tom McGillvray, Dan Bucks and Bill Fogarty

RSCC MEMBERS ABSENT: Sen. Ken Hansen

CONTRACT STAFF PRESENT: Terry Whiteside and Gloria O'Rourke

GUESTS: Jim Smitham, Charlie Clark, Barbara Ranf, Larry Finch, Lola Raska, Patty Schlaeger, Gary Schlaeger, Mike Opar, Spook Stang, George Paul, Mike Kerns, Russ Connole, and Sheryl Ralph

1.0 Roll Call and Introductions

RSCC Chairman Mike O'Hara welcomed everyone to Butte and called the meeting to order. Following roll call, the audience was introduced.

2.0 Approval of Council Meeting Minutes August 14, 2006

Larry Bonderud moved the minutes of the August 14th, 2006 RSCC be approved. Carla Allan provided the second. All voted in favor to approve the minutes.

3.0 Update on Economic Affairs Interim Committee Report

Representative Tom McGillvray provided a report on September 11th to the Legislative Economic Affairs Interim Committee (EAIC) regarding the activities and progress of the RSCC. Rep. McGillvray said the EAIC agreed to forward legislation to the 60th legislative session to:

- address terms of RSCC council members
- move oversight of the RSCC to Montana Department of Transportation
- address funding for the council
- add a member to the council to represent the coal industry

Rep. McGillvray will carry the legislation in the House; Senator Ken Hansen to the Senate. Rep. McGillvray noted the EAIC would like to have had more progress reported but understands the RSCC is dealing with complicated issues.

4.0 Taxation Subcommittee Update

The Taxation Subcommittee met via conference call on September 20th and at 10:00am today, September 27th. Based on these two meetings, Subcommittee Chairman Rep. McGillvray summarized:

- Due to language in the 4R Act, tax incentives to preserve branch lines and/or to encourage new development in active areas would be viewed as discriminatory and not survive legal argument.
- However, the state could possibly make a case for rate discrimination based on the assumption it is cheaper for grain to be shipped from the Midwest to the west coast than from Montana to the west coast. This situation involves interstate commerce and could be defensible under the 4R Act.

- An official finding is needed to determine actual rate discrimination. There has been no official documentation since 1980 and this needs to be brought current through a state body. Once such a finding is established, a means to address the issue via tax resolve, either incentives or disincentives would be proposed.
- A second finding would need to establish that the federal government has failed to regulate interstate commerce to not discriminate against Montana's citizens and businesses.
- Take this request to the legislature along with a plan of action should discrimination be found.
- The RSCC Taxation Subcommittee will further explore these items and report back to the RSCC.

5.0 Transportation Subcommittee Update

The RSCC Transportation Subcommittee met via conference call on September 19th and this morning, September 27th, at 9:00am. Chairman Mike O'Hara provided the following summary and action items:

- Communicate with railroads to ascertain from the railroad perspective what incentives the RSCC could provide to them that would encourage rail infrastructure development in Montana.
- In a similar fashion, communicate with motor carriers to determine if there are any incentives for development of the trucking industry.
- Request railroad plans from the railroads for the RSCC to ascertain the rail company's investment targets.
- Communicate with port authorities to determine impediments and identify ways to facilitate development.
- Work with Montana Department of Transportation to identify and support a "core" system for the state's rail branch lines. The identification of a core system would encourage investors, guide local officials with rail decisions and preserve Montana's remaining branch lines.
- Define recommendations for the legislature.

6.0 Technical Assistance Update

Terry Whiteside provided a fifth draft of the 2006 Harvest Rail Survey that will identify logistical issues Montana farm producers and elevators encountered during the 2006 harvest. Mr. Whiteside also shared a survey conducted by the Montana Grain Growers Association in May of 2004 that reflected change in grain hauling distances for producers.

Following a discussion of the 2006 Harvest Rail Survey, a column will be added for producers to indicate if they had to haul grain farther than 100 miles to market. Terry Whiteside will implement the survey using membership partners such as the Montana Wheat & Barley Committee, Montana Grain Growers Association, Montana Farm Bureau, Montana Farmers Union, and WIFE to fill out the survey.

7.0 RSCC Serving as Facilitator to Foster Cooperative Relationships between Railroads

The RSCC members spent some time discussing its role as facilitator to encourage cooperative relationships between railroads operating in Montana and the region. Evan Barrett said the idea is to encourage companies to work with each other to build partnerships and relationships and that the role of an economic developer is often that of a match-maker. Mr. Barrett mentioned the partnership of Canadian Pacific in Shelby as one example and the joint BNSF and Union Pacific venture in the coal

fields in Wyoming as another. Evan Barrett encouraged the RSCC to be looking for these opportunities in Montana.

8.0 Budget Discussion for RSCC

Evan Barrett reported the RSCC budget is in good shape for this fiscal year. There is some funding available for additional technical assistance once planning work begins.

A budget figure needs to be established and submitted for appropriation in House Bill 2. Before setting the amount a subcommittee consisting of Evan Barrett, Larry Bonderud, Rep. Tom McGillvray, Sen. Ken Hansen and Director Jim Lynch will meet to discuss staffing options, etc. Mr. Barrett noted the figure is needed in the Budget Office prior to November 15th.

Dick Turner stated that as Montana Department of Transportation (MDT) is partially funded by federal dollars, MDT staff is limited on some activities.

9.0 Letter from Dr. Daniel Fierher regarding abandoned line between Great Falls and Helena

A letter from Dr. Daniel Fierher of Helena stated "We are in the process of applying to the U.S. Surface Transportation Board for approval to acquire and restore service to BNSF's *defacto* abandoned rail line from Great Falls to Helena."

Barbara Ranf said that the rail line is out of service and not for sale. BNSF is watching the development of Canadian traffic for the line but is not prepared to invest in the washout near Ulm as capital is being used for working lines. The line has not had traffic for six years. Great Falls and Laurel average five trains per day; BNSF is uncertain if the Great Falls to Helena line would provide the necessary volume for use. The letter from Dr. Fierher concerns BNSF because it involves BNSF assets and private property. The letter also requests BNSF to provide names of shippers that used the line. BNSF protects the confidentiality of its customers.

Director Jim Lynch will be asked to speak with Dr. Fierher to obtain additional information then confer with Chairman O'Hara so that Chairman O'Hara can determine whether or not to place Dr. Fierher on the next RSCC agenda.

10.0 Rail Updates

10.1 Union Pacific (Evan Barrett and Charlie Clark)

Evan Barrett reported the status of the Union Pacific (UP) operating in Montana continues to be positive. Several issues have been discussed with UP near the end of the 2005 legislative session and since then. UP President James Young and Governor Schweitzer have spoken several times, including a face-to-face meeting recently in Helena. Discussions also continue between the Governor's Office of Economic Development, Butte local officials and the Butte delegation. The Union Pacific is the largest private user of diesel in the U.S. and represents a market for coal to liquids usage in Montana.

Charlie Clark said the venue issue is very important to UP, regarding the court system and where claims are heard. Evan Barrett said that the state administration will work closely with the Butte delegation to address the issue through legislation and report back to the RSCC.

10.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud shared two articles with the RSCC members and encouraged everyone to be aware of transportation issues and changes nation wide as these long distance decisions affect what happens in Montana. Mr. Bonderud said Canadian Pacific (CP) expansion programs are complete with a 12% increase in capacity. Two additional daily trains are running on this route as a result of events in China.

Larry Bonderud pointed out that Montana needs to build partnerships regarding ethanol, bio diesel and coal gasification energy programs because railroads will be the vehicle for moving the products. Montana may want to consider purchasing rail equipment as others have done. The RSCC needs to understand the issues and be aware of all of the options to foster cooperation between railroads.

Charlie Clark noted that railroads do not own the containers, thus the decisions as to where they will be loaded or unloaded are made off shore by the container companies, most of which are foreign. Steam ship companies also own the containers and have the volume to dictate where trains run and when. Montana does not have the volume required.

10.3 Montana Rail Link (Evan Barrett)

Nothing new to report.

10.4 BNSF Railway (Barbara Ranf)

Barbara Ranf reported BNSF will be holding more listening forums with producers around the state October 16, 17, 18th.

BNSF is in the feasibility study phase to test diesel from the coal to liquids process to determine performance levels in BNSF engines.

10.5 Central Montana Railroad (Carla Allen)

Nothing new to report.

10.6 Watco, Yellowstone, Mission Valley, others

No representative available.

11.0 Next Council Meeting

11.1 Meeting Date and Location

Larry Bonderud made the motion for the next RSCC meeting to be held Wednesday, December 6th, in Great Falls. Russell Hobbs provided the second; all present voted in favor of the motion. Barbara Ranf was asked to possibly arrange a tour for the RSCC to view some of the Great Falls to Helena line and perhaps the washout near Ulm. Evan Barrett suggested a possible high-rail ride from BNSF over portions of the line.

At this time, Dan Bucks motioned to authorize the budget subcommittee to recommend a figure to the Budget Office for the RSCC budget. If Chairman O'Hara is not on the call, he is to review the figure prior to submittal to the Budget Office. Larry Bonderud provided the second to the motion; all present voted in favor of the motion.

Regarding the meeting location, Patty Schlaeger will talk with Cynthia Schulz, Airport Director for the Great Falls International Airport Authority for available space at the airport.

11.2 Agenda

Items for the December 6th meeting:

- Transportation Subcommittee Report

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- Taxation Subcommittee Report
- Dr. Daniel Fiehrer (Great Falls/Helena line)
- 2006 Rail Harvest Survey Update
- Budget Report
- View of Great Falls to Helena line

12.0 Comments or Issues from Council Members?

No comments were received.

13.0 Formal Public Comment Period

No comments were received.

14.0 Adjournment

George Paul and Sheryl Ralph were thanked for serving as RSCC hosts. The meeting was adjourned to begin a tour of Port of Montana Butte, guided by George Paul and Mike Kerns.